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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,511	06/15/2001	Carlos G. Gonzalez-Rivas	6511	8335
22922 7590 09/27/2010 REINHART BOERNER VAN DEUREN S.C. ATTN: LINDA KASULKE, DOCKET COORDINATOR 1000 NORTH WATER STREET SUITE 2100 MILWAUKEE, WI 53202				
EXAMINER				
BOVEJA, NAMRATA				
ART UNIT		PAPER NUMBER		
3622				
NOTIFICATION DATE		DELIVERY MODE		
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
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8 *Ex parte* CARLOS G. GONZALEZ-RIVAS  
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11 Appeal 2009-011637  
12 Application 09/882,511  
13 Technology Center 3600  
14

15  
16 Before JAMES D. THOMAS, ANTON W. FETTING, and  
17 JOSEPH A. FISCHETTI, *Administrative Patent Judges*.  
18 FETTING, *Administrative Patent Judge*.

19 DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE<sup>2</sup>

Carlos G. Gonzalez-Rivas (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-28, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented a way of using a displayed website logo on a television commercial to let consumers log onto the website and participate in interactive online contests (Specification 1:¶ 0001).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

1. A method of increasing consumer awareness of products or services which are advertised in television commercials, comprising:

[1] enhancing a plurality of television commercials by displaying a marketing website logo during each of said plurality of enhanced television commercials;

[2] providing a marketing website which is associated with and identified by said marketing website logo and which is accessible by consumers;

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<sup>2</sup> Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed September 5, 2008) and the Examiner's Answer ("Ans.," mailed March 6, 2009).

1 [3] displaying to a consumer who has entered said marketing  
2 website in response to viewing a particular enhanced television  
3 commercial

4 a list of television networks on which enhanced  
5 television commercials have aired, and

6 prompting the consumer

7 to select the particular television network on which the  
8 consumer viewed the particular enhanced television  
9 commercial;

10 [4] displaying to the consumer

11 a list of television shows broadcasted by the particular  
12 television network during which television shows  
13 enhanced television commercials have been broadcasted,  
14 and

15 prompting the consumer

16 to select the particular television show during which the  
17 consumer viewed the particular enhanced television  
18 commercial;

19 [5] displaying to the consumer

20 a list of enhanced television commercials which were  
21 broadcasted during the particular television show, and

22 prompting the consumer

23 to select the particular enhanced television commercial;  
24 and

25 [6] providing a game or contest for the consumer to play

26 which game or contest provides information on or relates  
27 to the particular product or service advertised by the  
28 particular enhanced television commercial.

1 The Examiner relies upon the following prior art:

Lesandrini US 2003/0036944 A1 Feb. 20, 2003

2 *Bacardi Brings Out the Bottle in Cable-TV Ad for Amaretto - Spot Is*  
3 *Firm's First to Blatantly Display Product* O'Connell May 2001

4 *Job-Hunting Web Sites' Ads Will Duel at Super Bowl* Silverman et al.  
5 Jan. 2001

6 *Put your hiring into high gear! Introducing Monster Momentum™*  
7 *[http://www.web.archive.org/web/20010418150929/momentum.Monster.c](http://www.web.archive.org/web/20010418150929/momentum.Monster.com/)*  
8 *om/* (last visited Apr. 18, 2001).

9 Claim 7 stands rejected under 35 U.S.C. § 112, second paragraph, as  
10 failing to particularly point out and distinctly claim the invention.<sup>3</sup>

11 Claims 1-3, 6, and 8-11 stand rejected under 35 U.S.C. § 103(a) as  
12 unpatentable over O'Connell, Silverman, and Official Notice.

13 Claims 4, 5, and 7 stand rejected under 35 U.S.C. § 103(a) as  
14 unpatentable over O'Connell, Silverman, Monster.com, and Official Notice.

15 Claims 12-26 stand rejected under 35 U.S.C. § 103(a) as unpatentable  
16 over O'Connell, Silverman, Lesandrini, and Official Notice.

17 Claim 27 stands rejected under 35 U.S.C. § 103(a) as unpatentable over  
18 O'Connell, Silverman, Monster.com, and Official Notice.

19 Claim 28 stands rejected under 35 U.S.C. § 103(a) as unpatentable over  
20 O'Connell, Monster.com, and Official Notice.

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<sup>3</sup> A similar rejection of claim 4 was withdrawn at Answer 28.

ISSUES

The issue as to indefiniteness hinges on whether one of ordinary skill would have understood how a logo could identify a type of printed material. The issue of obviousness hinges on whether the Examiner presented evidence that the nested selection in the claims were known to those of ordinary skill.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

*Facts Related To Differences Between The Claimed Subject Matter And The Prior Art*

01. The Examiner presented no findings as evidence that it was known to use a series of nested prompts to obtain information.

ANALYSIS

*Claim 7 rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention.*

Claim 7 recites displaying a readily recognizable logo or other indicia that identifies a type of printed material. The Examiner found that a logo does not identify the purpose of a printed material. Answer 28-29. The Appellant responds that Fig. 8 Reference 102 shows a biller logo that identifies a bill as a type of printed material. Appeal Br. 25. We agree that the contents of a logo can express many things; including a type of printed material and that the figure in the Appellant's disclosure is such an example.

*Claims 1-28 rejected under 35 U.S.C. § 103(a) as unpatentable over  
O'Connell, Official Notice, and various combinations of Silverman,  
Monster.com, and Lesandrini.*

All of the claims recite, using a website and indicia, providing information, a contest, or a game. The Examiner found that the references described these limitations. All of the claims except for claim 27, recite a three step nested query to determine how a commercial was found. Claim 27 recites that the query occurs with a series of screens. The Examiner took Official Notice of the notoriety of asking how a consumer found out about a marketing promotion. The Examiner also took notice that it was predictable to point to a query result with a mouse. Answer 4-6.

The Appellant argues that there is a lot more in the claims and so the Official Notice is improper and the Examiner failed to present a prima facie case. Appeal Br. 18-23. The Examiner responded that the Appellant's traversal of the Official Notice is improper. Answer 26. While we agree with the notoriety of querying for how a consumer found out about a promotion, and that the Appellant has not properly traversed the Official Notice, the Examiner's response misses the point.

The Examiner presented no findings as evidence that it was known to use a series of nested prompts to obtain information. FF 01. This is the import of the Appellant's arguments, viz. there is a lot in those limitations (e.g. steps [3]-[5] of claim 1) that the Examiner made no findings toward. We must agree with the Appellant that the Examiner failed to present a prima facie case of obviousness as not all the limitations were shown to be known.

CONCLUSIONS OF LAW

Rejecting claim 7 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention is in error.

Rejecting claims 1-28 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Official Notice, and various combinations of Silverman, Monster.com, and Lesandrini is in error.

DECISION

To summarize, our decision is as follows.

- The rejection of claim 7 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention is not sustained.
- The rejection of claims 1-3, 6, and 8-11 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, and Official Notice is not sustained.
- The rejection of claims 4, 5, and 7 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Monster.com, and Official Notice is not sustained.
- The rejection of claims 12-26 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Lesandrini, and Official Notice is not sustained.
- The rejection of claim 27 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Monster.com, and Official Notice is not sustained.



- 1       • The rejection of claim 28 under 35 U.S.C. § 103(a) as unpatentable  
2           over O'Connell, Monster.com, and Official Notice is not sustained.

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REVERSED

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10    Address

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